

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J. C., a Person Coming Under the
Juvenile Court Law.

B207771
(Los Angeles County Super. Ct.
No. CK71128)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L. C.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Jan G. Levine, Judge. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Melinda White Svec, Deputy County Counsel, for Plaintiff and Respondent.

L. C. (father) appeals from the May 5, 2008 judgment declaring his five-year-old son and one-year-old twins dependents of the court under Welfare and Institutions Code section 300.¹ He contends substantial evidence does not support the sustained jurisdictional allegations or the dispositional orders removing the children from his custody and requiring him to participate in drug treatment. As substantial evidence supports the findings, we affirm the judgment and orders.

STATEMENT OF FACTS AND PROCEDURE

In December 2007, the children lived with mother in the home of the maternal grandmother. Father was in prison for forgery of an official seal. Born in 1983, he began to engage in criminal activities at age 13, joined a gang, and started using drugs at age 16. He had an extensive juvenile and adult history including arrests for drug and gang-related offenses. Father did not support the children financially or provide regular care for them, as he was frequently incarcerated. “He would get arrested for six months out of the year.” He got high on marijuana at least twice a day and drank a tall beer every day when he was at the maternal grandmother’s house. Mother abused crystal methamphetamine. The maternal grandmother raised the children; the five-year-old called her “mom.”

On December 2, 2007, mother left the home without making a plan for the children’s care, and she did not return. The maternal grandmother entered into a voluntary maintenance contract with the Department of Children and Family Services for maternal grandmother to provide care for the children in mother’s absence.

On December 12, 2007, father was released from prison after serving 9 months of a 16-month sentence. He and mother returned to reside in the maternal grandmother’s

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

home. In an interview on December 14, 2007, father “admitted to using marijuana[; he] claimed to be clean and said he was subjected to monthly drug tests per the condition of his parole.” On December 17, 2007, father agreed to participate in a voluntary family maintenance case and participate in drug counseling, anger management, and parenting services. However, on December 18, 2007, the parents had an argument, and father left the house in the middle of the night without advising the maternal grandmother or the social worker of his whereabouts or making arrangements for the care of the children. On December 19, 2007, when he was with his friends, father was arrested for violation of parole and placed in jail. The arrest level was felony, and he was held on no bail. Also on December 19, 2007, mother left the home without making arrangements for the children’s care. The children were detained with the maternal grandmother and a section 300 petition was filed.

Father was returned to prison for six months for violating his parole. In an interview on January 22, 2008, father stated he did not use drugs in prison. His probation officer provided him with referrals for drug treatment upon his release. Father stated he no longer participated in the gang but continued to interact with his former gang mates.

Father was paroled from prison on March 29, 2008. He had only one visit with the children.

On May 5, 2008, the children were declared dependents of the court based on sustained allegations under section 300, subdivision (b), as to father, that there is a substantial risk the children will suffer serious physical harm or illness as a result of father’s substance abuse, in that father has a history of substance abuse and is a current user of marijuana which renders him incapable of providing regular care and supervision. Father was not present at the hearing. Custody was taken from the parents and reunification services were ordered. Father was ordered to participate in parenting and drug counseling, and to submit to random drug testing. He was granted monitored visitation. Father’s counsel timely filed a notice of appeal.

DISCUSSION

Substantial Evidence Supports the Sustained Allegation

Father contends substantial evidence does not support the allegation under section 300, subdivision (b) that he had a history of drug use and was a current user of marijuana, which created a substantial risk of harm to the children. Father contends there was no evidence he was a current drug user and his history of drug use did not create a current risk of harm to the children. We conclude substantial evidence supports the sustained allegation.

“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

Section 300, subdivision (b) describes, inter alia, a child who is at substantial risk of suffering serious physical harm or illness as a result of “the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s . . . substance abuse.” “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

The social workers’ reports introduced at the hearing contain substantial evidence to support the finding. Father began abusing drugs in 1999. He continued to engage in

heavy marijuana use after the children were born. There is no evidence he participated in drug rehabilitation services either while incarcerated or at any time when he was out of prison. His untreated marijuana habit, agreement in December 2007 to enroll in drug treatment, probation officer's provision of drug treatment referrals in 2008, continued association with old friends, inability to remain free from incarceration, and failure to come to court when the allegations of the petition were heard indicate his drug problem remained unresolved and continued use of drugs. Caretaker drug abuse places children at risk of harm. (E.g., § 300.2 ["[t]he provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child"].) Moreover, illegal drug use places children at risk of harm through caretaker absence resulting from criminal arrests and convictions. The foregoing is substantial evidence that father's drug problem was ongoing and created a substantial risk of harm to the children. Thus, the sustained allegation is supported by substantial evidence. In any event, apart from whether the allegation of current marijuana use is supported by substantial evidence, the foregoing is substantial evidence supporting the finding under section 300, subdivision (b) that father's history of drug use placed the children at substantial risk of serious harm.

Substantial Evidence Supports the Dispositional Orders

Father contends the dispositional orders removing the children from his custody under section 361, subdivision (c)² and requiring him to participate in drug treatment

² Section 361, subdivision (c) provides in pertinent part: "A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody."

were not supported by substantial evidence, in that there was no evidence father had used marijuana since he went to prison in February 2007 and no evidence father's actions placed the children at risk. The contentions are without merit. As shown above, there was substantial evidence father had a serious, longstanding, unresolved drug problem. There was also substantial evidence father could not remain free of incarceration. Moreover, father had been out of the children's lives for 18 months prior to the hearing. He had not had custody of the children since February 2007, with the exception of one week in December 2007. Except for one visit, he had not visited the children since December 2007. He did not appear in person at the hearing and request custody. Based on the foregoing, the orders removing the children from father's custody and requiring drug treatment were supported by substantial evidence.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.